

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT RILEY,

Petitioner,

v.

CASE NO. 04-CV-71573-DT
HONORABLE ARTHUR J. TARNOW

MARY BERGHUIS,

Respondent.

**SECOND AMENDED JUDGMENT GRANTING JUDGMENT
IN FAVOR OF THE STATE AND ORDERING PETITIONER TO REPORT
TO THE MICHIGAN DEPARTMENT OF CORRECTIONS**

On September 15, 2005, the Court granted Petitioner's application for the writ of habeas corpus. The Court stated in its dispositive opinion that Petitioner was denied his constitutional right to effective assistance of trial counsel by defense counsel's failure to move for a directed verdict of acquittal at the close of the prosecution's case.

Respondent appealed the Court's decision, and on April 3, 2007, the United States Court of Appeals for the Sixth Circuit reversed this Court's decision. *See Riley v Berghuis*, 481 F.3d 315 (6th Cir. 2007). According to the Court of Appeals, Petitioner failed to demonstrate that his attorney's performance prejudiced the defense, because he did not show a reasonable probability that, had his counsel moved for a directed verdict of acquittal, the motion would have been granted. *Id.* At 324.

The petition for rehearing *en banc* was denied on August 9, 2007.

This matter currently pending before the Court on remand from the Court of Appeals for entry of an appropriate order. It is hereby ORDERED that the Court's first amended judgment, which conditionally granted the writ of habeas corpus [dkt. #30, Oct. 3, 2005], is VACATED. Judgment is entered in favor of Respondent.

The Court also VACATES its order granting an unconditional writ of habeas corpus and directing the State to release Petitioner from custody [dkt. #39, Dec. 22, 2006]. Petitioner shall report immediately to the Michigan Department of Corrections for completion of his sentence.

S/Arthur J. Tarnow
Arthur J. Tarnow
United States District Judge

Dated: August 14, 2007

I hereby certify that a copy of the foregoing document was served upon parties/counsel of record on August 14, 2007, by electronic and/or ordinary mail.

S/Catherine A. Pickles
Judicial Secretary